

REMARKS

This application has been carefully reviewed in light of the Office Action mailed July 6, 2000. Although Applicant believes that Claim 12 is allowable over the prior art as originally submitted, Claim 12 has been amended to more particularly point out and more distinctly claim various inventive concepts. Claim 19 has been amended to correct a typographical error. To advance prosecution of this application, Applicant has responded to each issue raised by the Examiner. Applicant respectfully requests reconsideration, further examination, and favorable action in this case.

The Examiner rejects Claims 1-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,953,707 to Huang et al. ("*Huang*") in view of U.S. Patent No. 5,970,479 to Shepherd ("*Shepherd*"). Applicant respectfully traverses these rejections for reasons discussed below.

I. OFFICIAL NOTICE

The Examiner repeatedly acknowledges in the Office Action that *Huang* and *Shepherd* fail to teach the elements of numerous claims, but takes Official Notice that those untaught elements are old and well-known. In particular, the Examiner acknowledges that *Huang* and *Shepherd* fail to teach every element of Independent Claim 12, but asserts that all elements recited in Claim 12 were well-known at the time the invention was made.

Applicant respectfully objects to the taking of Official Notice in each instance, including with respect to Claim 12. The Examiner has not cited any references that purportedly teach these limitations. Nor has the Examiner cited references purporting to show that these limitations were well-known at the time the invention was made. Pursuant to M.P.E.P. §2144.03 and controlling decisions of the Federal Circuit, Applicant respectfully requests that the Examiner cite, if possible, specific prior art supporting these assertions.

II. CLAIMS 1-11 ARE PATENTABLE OVER *HUANG AND SHEPHERD*

Independent Claim 1 of the present application recites:

A method of optimizing multi-enterprise supply chain agreements using an electronic option contract, the method comprising:
determining at a buyer computer a range of forecasted demand for a product;
communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;
executing the option contract;
updating at the buyer computer the forecasted demand;
and
exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

Huang discloses a system that allows a “decision maker in a supply chain to view the chain from their own perspective and understand the effect that their decisions will have on the supply chain as a whole.” (*Col. 1, lines 52-55*). In one aspect of operation, the system of *Huang* generates replenishment orders for a product. (*Col. 36, lines 1-9*). These replenishment orders are generated under a VMR arrangement, which stands for “Vendor Managed Replenishment.” (*Col. 36, lines 2-4; Col. 14, line 4*). *Huang* discloses that a VMR arrangement is a “logistics partnership agreement” where a vendor manages the inventory of a customer. (*Col. 32, lines 10-15*). The vendor determines when the customer’s stock of a product needs to be replenished, rather than the vendor responding to orders from the customer. (*Col. 32, lines 15-19*). This VMR arrangement is routinely embodied in a contract between the vendor and the customer. (*Col. 32, lines 19-21*). To help the customer and vendor enter into a VMR contract through some means other than using the system of *Huang*, *Huang* provides an analysis tool to help “study the feasibility of VMR programs; evaluate the terms of VMR contracts; and periodically review the overall performance of the VMR program.” (*Col. 32, lines 38-42*).

As noted by the Examiner, *Huang* fails to disclose, teach, or suggest the use of option contracts. Actually, *Huang* fails to disclose, teach, or suggest a system that allows the formation and execution of *any* type of contract between a buyer and a seller. *Huang* merely discloses a system in which a vendor generates replenishment orders for a product on behalf of a customer.

Those orders are placed according to a *previously-negotiated* VMR contract between the customer and the vendor. The system of *Huang* thus allows the customers and vendors to review and evaluate previously-existing contract terms, but does not allow the customers and vendors to enter into electronic contracts with one another. Accordingly, at a minimum, *Huang* does not disclose, teach, or suggest communicating “an offer to enter into an option contract” where the option contract includes “an option corresponding to the range of forecasted demand” for a product, “executing the option contract,” “updating . . . the forecasted demand,” or “exercising the option in the option contract . . . based on the updated forecasted demand,” all as recited in Claim 1. As a result, *Huang* fails to disclose, teach, or suggest the invention recited in Claim 1, whether *Huang* is considered alone or in combination with *Shepherd*, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

Shepherd similarly fails to disclose, teach, or suggest the invention recited in Claim 1. *Shepherd* discloses a method and apparatus for “management of risk relating to specified, yet unknown, future events.” (*Col. 1, lines 8-10*). The system allows “stakeholders” and “counterparties” to enter into risk management contracts, which may include “option contracts.” (*Col. 55, line 60 – Col. 56, line 7*). The types of option contracts include “derivative-primary” risk management contracts and “derivative-secondary” risk management contracts. (*Id.*). Derivative-primary option contracts and derivative-secondary option contracts allow an option-holder to “exercise its option over a pre-established contract.” (*Col. 49, lines 55-60; Col. 50, lines 36-41*).

The “option contract” disclosed in *Shepherd* deals with an option to buy or sell a “pre-established contract.” At a minimum, *Shepherd* fails to disclose, teach, or suggest communicating “an offer to enter into an option contract” or “executing the option contract,” as recited in Claim 1. Also, because the option contract of *Shepherd* deals with an option associated with a pre-established contract, not a range of forecasted demand for a product, *Shepherd* also fails to disclose, teach, or suggest “the option contract including an option corresponding to the range of forecasted demand,” “updating . . . the forecasted demand” or “exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand,” as recited in Claim 1. As a result, *Shepherd* fails to disclose, teach, or suggest the invention recited in Claim 1, whether *Shepherd* is considered alone or in combination with

Huang, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 1, and Claims 2-11 depending therefrom.

III. CLAIMS 12-18 ARE PATENTABLE OVER *HUANG* AND *SHEPHERD*

Independent Claim 12 of the present application recites:

A method of optimizing multi-enterprise supply chain agreements using an electronic option contract, the method comprising:

receiving at a seller computer terms of an option contract from a buyer computer, the terms comprising an option corresponding to a buyer's range of forecasted demand for a product;

communicating to the buyer computer an acceptance of the terms of the option contract;

storing the terms of the accepted option contract in a memory accessible to the seller computer;

receiving from the buyer computer a request to exercise the option with the buyer's updated forecasted demand for the product; and

enforcing the terms of the option contract at the seller computer without user input.

The Examiner acknowledges in the Office Action that *Huang* and *Shepherd* fail to teach most limitations of Claim 12. *Huang* and *Shepherd* also fail to suggest these limitations and are insufficient to defeat the patentability of Claim 12.

As explained above, *Huang* fails to disclose, teach, or suggest a system that allows buyers and sellers to enter into any type of contract. Therefore, at a minimum, *Huang* fails to disclose, teach, or suggest "receiving ... terms of an option contract" or "communicating ... an acceptance of the terms of the option contract." As a result, *Huang* fails to disclose, teach, or suggest the invention recited in Claim 12, whether *Huang* is considered alone or in combination with *Shepherd*, any other reference, or any information known to those skilled in the art at the time the invention was made.

Like *Huang*, *Shepherd* also fails to disclose, teach, or suggest the invention recited in Claim 12. Because the option contract of *Shepherd* deals with an option associated with a pre-established contract, and not a range of forecasted demand for a product, at a minimum *Shepherd* fails to disclose, teach, or suggest receiving and communicating an acceptance of the terms of an option contract, where the terms include "an option corresponding to a buyer's range of forecasted demand for a product." *Shepherd* also fails to disclose, teach, or suggest "receiving . . . a request to exercise the option with the buyer's updated forecasted demand for the product." As a result, *Shepherd* fails to disclose, teach, or suggest the invention recited in Claim 12, whether *Shepherd* is considered alone or in combination with *Huang*, any other reference, or any information known to those skilled in the art at the time the invention was made.

In addition, as noted above, Applicant respectfully objects to the taking of Official Notice that the limitations recited in Claim 12 are old and well-known. The Examiner has not cited any references that purportedly teach these limitations. Nor has the Examiner cited any references purportedly showing that these limitations were well-known at the time the invention was made. Pursuant to M.P.E.P. §2144.03 and controlling decisions of the Federal Circuit, Applicant respectfully requests the Examiner to cite specific prior art, if possible, supporting these assertions.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 12, and Claims 13-18 depending therefrom.

IV. CLAIMS 19-27 ARE PATENTABLE OVER *HUANG* AND *SHEPHERD*

Independent Claim 19 of the present application recites:

A procurement manager operable to be executed on the processor of a buyer computer, the procurement manager comprising:

· a forecast module operable to determine the buyer's range of forecasted demand for a product;

· a negotiation module operable to communicate to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including a proposed option corresponding to the range of forecasted demand, the negotiation module further operable to receive from the seller computer a modified range of forecasted demand, to communicate the modified range of forecasted demand to the forecast module, and

to receive from the forecast module a compromised range of forecasted demand;

an execution module operable to execute an option contract including an option corresponding to the compromised range of forecasted demand; and

an exercise module operable to receive from the forecast module an updated forecasted demand within the compromised range of forecasted demand and to communicate to the seller computer a request to exercise the option with the updated forecasted demand.

As explained above, *Huang* fails to disclose, teach, or suggest a system that allows buyers and sellers to enter into any type of contract. As a result, at a minimum, *Huang* fails to disclose, teach, or suggest a negotiation module operable to communicate “an offer to enter into an option contract for the supply of a product” or an execution module “operable to execute an option contract.” Thus, *Huang* fails to disclose, teach, or suggest the invention recited in Claim 19, whether *Huang* is considered alone or in combination with *Shepherd*, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

Like *Huang*, *Shepherd* also fails to disclose, teach, or suggest the invention recited in Claim 19. At a minimum, because the option contract of *Shepherd* deals with an option associated with a pre-established contract, and not a range of forecasted demand for a product, *Shepherd* fails to disclose, teach, or suggest an execution module operable to execute an option contract that includes “an option corresponding to the compromised range of forecasted demand” or an exercise module operable to “communicate . . . a request to exercise the option with the updated forecasted demand.”

Beyond that, *Shepherd* fails to disclose, teach, or suggest allowing the different risk management parties to negotiate the terms of the risk management contracts. In *Shepherd*, an “ordering stakeholder” submits an offer to enter into a risk management contract, and the offer includes a range of outcomes for some specified, yet unknown, future event. (*Abstract*). The offer also includes a consideration value, which represents how much the ordering stakeholder is willing to pay to enter the risk management contract. (*Abstract*). A “counter-party” submits information regarding the likelihood of the future event actually occurring. (*Abstract*). The system of *Shepherd* uses this information to “price” the ordering stakeholder’s offer, which

identifies how much consideration the counter-party wants to receive before entering the contract. (*Abstract*). The system then attempts to match the offered consideration of the ordering stakeholder with the priced consideration of the counter-party. (*Abstract*).

Thus, the ordering stakeholder submits a consideration it is willing to pay, and the system uses the counter-party's information to determine the consideration that the counter-party is willing to accept. The system then attempts to match the considerations. *Shepherd* fails to disclose, teach, or suggest any negotiation between the parties. Therefore, at a minimum, *Shepherd* fails to disclose, teach, or suggest a negotiation module operable to "receive from the seller computer a modified range of forecasted demand, to communicate the modified range of forecasted demand to the forecast module, and to receive from the forecast module a compromised range of forecasted demand." As a result, *Shepherd* fails to disclose, teach, or suggest the invention recited in Claim 19, whether *Shepherd* is considered alone or in combination with *Huang*, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 19, and Claims 20-27 depending therefrom.

V. CLAIMS 28-37 ARE PATENTABLE OVER HUANG AND SHEPHERD

Independent Claim 28 of the present application recites:

A supply manager operable to be executed on the processor of a seller computer, the supply manager comprising:

a forecast module operable to determine the seller's range of forecasted supply capacity for a product;

a negotiation module operable to receive from a buyer computer an offer to enter into an option contract for the supply of a product, the option contract including a proposed option corresponding to a range of forecasted demand;

an execution module operable to execute the option contract and to store the terms of the option contract in a memory accessible to the seller computer; and

a tracking module operable to receive a request from the buyer computer to exercise the option, to access the memory to determine the terms of the option contract, and to determine whether to grant the request to exercise the option.

As explained above, *Huang* fails to disclose, teach, or suggest a system that allows buyers and sellers to enter into any type of contract. Therefore, at a minimum, *Huang* fails to disclose, teach, or suggest a negotiation module operable to receive from a buyer computer “an offer to enter into an option contract for the supply of a product” or an execution module operable to “execute the option contract and to store the terms of the option contract in a memory.” As a result, *Huang* fails to disclose, teach, or suggest the invention recited in Claim 28, whether *Huang* is considered alone or in combination with *Shepherd*, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

Like *Huang*, *Shepherd* also fails to disclose, teach, or suggest the invention recited in Claim 28. At a minimum, because the option contract of *Shepherd* deals with an option associated with a pre-established contract, and not a range of forecasted demand for a product, *Shepherd* fails to disclose, teach, or suggest a negotiation module operable to receive from a buyer computer “an offer to enter into an option contract for the supply of a product” where the option contract includes “a proposed option corresponding to a range of forecasted demand” for the product. *Shepherd* also fails to disclose, teach, or suggest an execution module operable to “execute the option contract and to store the terms of the option contract in a memory.” In addition, *Shepherd* fails to disclose, teach, or suggest a tracking module operable to “receive a request from the buyer computer to exercise the option, to access the memory to determine the terms of the option contract, and to determine whether to grant the request to exercise the option,” where the option involves a range of forecasted demand for a product. As a result, *Shepherd* fails to disclose, teach, or suggest the invention recited in Claim 28, whether *Shepherd* is considered alone or in combination with *Huang*, with any other reference, or with any information known to those skilled in the art at the time the invention was made.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claim 28, and Claims 29-37 depending therefrom.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case, the Examiner is invited to call the undersigned attorney for Applicant, Christopher W. Kennerly, at the convenience of the Examiner. Mr. Kennerly may be reached at 214-953-6812.

Applicant does not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Christopher W. Kennerly
Reg. No. 40,675

2001 Ross Avenue
Dallas, TX 75201-2980
(214) 953-6812

Date: 9/22/00